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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,240	05/11/2001	Christine S. Vincent	26271-02	5992

21013 7590 06/28/2005

AGFA CORPORATION
LAW & PATENT DEPARTMENT
200 BALLARDVALE STREET
WILMINGTON, MA 01887

EXAMINER	
GARCIA, ERNESTO	
ART UNIT	**PAPER NUMBER**
3679	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/853,240	VINCENT ET AL.	
	Examiner	Art Unit	
	Ernesto Garcia	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 April 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,6,7,9,12 and 34-39* is/are pending in the application.

4a) Of the above claim(s) *34-39* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,6,7,9 and 12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 October 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election

Claims 34-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

Applicants have argued that claims 34-39 are similar in scope to claim 13 and that the examiner recommended claims 34-39 in a telephone interview of March 3, 2004 to be presented in method form. In response, the examiner suggested claim 13 to be better presented in method form, but what the examiner didn't realize at the time of suggestion or at the time of making the election requirement is that claim 13 is not readable on the elected species. The examiner believed, during the election, that claim 13 was the system for performing the method for electronic commerce over a computer network shown in Figure 2. The examiner now realizes that the system as was written in claim 13 was a system for another method as clearly indicated in the language of claims 34-39. Further, according to the detail description of Figure 2, in amended paragraph 033 in lines 24-25, the availability report comprises the customer price and

--an- availability index (AI) instead of being comprised of the dealer availability index (DAI) and the dealer price adjustment (DPA) as required by lines 16-18 of claim 34. In any event, claims 34-39 are directed to a non-elected species, performed by the system of Fig. 5. Applicants are reminded that the election was made to Figure 2 and claims 34-39 are not readable to the elected species. Unless applicants can show that claims 34-39 are readable on the elected figure, the examiner would reconsider the withdrawal of these claims.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the steps of transmitting an order entry data set from a customer to an exchange through said computer network (claim 12, lines 3-4), transmitting a manufacturer specific order from the exchange through the computer network to the manufacturer (claim 12, lines 8-10), transmitting a product availability request from the manufacturer to a dealer through the computer network (claim 12, lines 13-14), transmitting an availability report from the dealer to the manufacturer through the computer network (claim 12, lines 17-18), transmitting a manufacturers confirmation report from the manufacturer to the exchange through the computer network (claim 12, lines 21-23), transmitting a product order confirmation from the exchange to said computer through the computer network (claim 12, lines 28-30), transferring purchase funds from the customer to the dealer through

said computer network (claim 12, lines 34-35), and transferring manufacturer funds from the dealer to the manufacturer through said computer network (claim 12, lines 37-38) in Figure 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant is reminded that Figure 2 shows transmitting an order entry data set from a customer to an exchange directly, 1, without a computer network being present. The same logic applies to all transmitting steps and the transferring steps.

The drawings are objected to under 37 CFR 1.83(a) because they fail to show placing an order entry data set over a network in Figure 2 as described in the specification in paragraph 033, in lines 1-2. Any methodological detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "54", "66", and "90" in Figure 5 have been used to designate the World Wide Web. Applicants have indicated that there is only one network.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: the description of Figure 3 on page 13 in paragraph 037 is contradictory to the description of Figure 3 on page 11 in paragraph 027. Is Figure 3 a product availability procedure or a product order method? Appropriate correction is required.

Claim Objections

Claims 2, 6, 7, and 12 are objected to because of the following informalities:

regarding claims 2, 6, and 7, these claims shall contain a reference to a claim previously set forth (112, 4th), claim 12 is not a previous claim;

regarding claim 12, the limitation "contractural relationship" in line 26 should be --contractural price relationship-- to provide antecedent basis to contractual price relationship recited in lines 40-41. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 2, 6, 7, 9 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention.

Regarding claim 12, it is unclear how one of ordinary skill in the art will derive the availability index from the dealer price adjustment (the availability report) and the customer price. Is there a formula that one can derive the availability index? The specification does not teach the derivation. Are the dealer price adjustment (availability report) and the costumer price manipulated together to make the availability index? How does one arrive to such derivation? The drawings do not show the availability index or the derivation.

Applicants have stated on page 17 of the remarks what the dealer availability index is, but the argument is out of scope as term at issue is the "availability index (AI)" and not the "dealer availability index (DAI)". In any event, applicants have failed to show how one derives (draws or obtains from) the availability index from the availability report, comprising the dealer price adjustment (DPA) and the customer price (the source).

Regarding claims 2, 6, 7, and 9, these claims do no comply with the enablement requirement as these claims depend from claim 12.

Claims 2, 6, 7, 9 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 12, the detailed description of the elected Figure 2, paragraph 33 line 18, states that the availability index (AI) is derived from the dealer availability index (DAI) comprising a dealer price adjustment; thus, the AI is derived from the dealer price adjustment and not both the availability report and a customer price as claimed in lines 24-25 of claim 12.

Applicants have argued, in response to the rejection, that the Office is confusing "derived" with some form of mathematical calculation and explain what occurs in the invention by stating that information is being transmitted. In response, the applicants have failed to provide support for the subject matter of lines 24-25 of claim 12. Nowhere in the specification is there support for an availability index derived from the availability report and the customer price. According to lines 25-26 of amended paragraph 033, the availability index is derived from the dealer availability index (DAI).

Regarding claim 7, applicants have stated that the product is transported to the customer through the computer network in claim 7. The examiner cannot find support on the specification to indicate the product is transported through the computer network. According to the specification, paragraph 50, the product is shipped to the customer.

Regarding claims 2, 6, and 9, the claims do no comply with the written description requirement as these claims depend from claim 12.

Claims 2, 6, 7, 9, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, the limitation "a product through said computer network" in lines 4-5 makes unclear whether this is another product then that recited in line 32 of

claim 12 or the same product. Further, if the product in claim 7 is the same product as in claim 12, claim 12 does not set forth the product being transported through the computer network.

Regarding claim 12, the metes and bounds of the claim is unclear. Lines 40-41, in claim 12, state that the customer price comprises the contractual price relationship and the dealer price adjustment. Does that mean that the customer price in line 25 also comprises the contractual price relationship and the dealer price adjustment as further defined in lines 40-41? It would appear to change the availability index to be derived from the availability report, the contractural price relationship, and the dealer price adjustment.

Regarding claims 2, 6 and 9, the claims depend from claim 12 and therefore are indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 6, 7, 9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al., 6,263,317, in view of applicant's admitted prior art.

Regarding claim 12, Sharp et al. disclose a method for e-commerce over a network, the method includes:

transmit an order entry data set **306** from a customer to an exchange **110** through the computer network; the order data set comprises a product identifier **1540** and a product volume **565**;

determine a manufacturer **130** from the product identifier **1540**;

transmit a manufacturer specific order from the exchange **110** to the manufacturer **130** through the computer network (col. 3, lines 32-36); the manufacturer specific order comprises the product identifier **1540** and the product volume **565**;

transmit a product availability request from the manufacturer **130** to a dealer **140** through the computer network (col. 4, lines 12-13); the product availability request comprises the product identifier **1540** and the product volume **565**;

transmit an availability report from the dealer **140** to the manufacturer **130** through the computer network (col. 4, lines 24-26); the availability report comprises a dealer price adjustment (either a commission, the shipping cost, or both);

transmit a manufacturers confirmation report from the manufacturer **130** to the exchange **110** through the computer network; the manufacturers confirmation report comprises an availability index (the quantity available) and a customer price from a contractual relationship between the customer and the manufacturer (the cost of the

product; applicant is reminded that when the customer places an order, the customer has set a contract to pay the price for an item as set forth by the manufacturer); the availability index is derived from the availability report (the dealer price adjustment --the commission, the shipping cost, or both) and the customer price is derived from the dealer price adjustment (the cost of the product, and the commission, the shipping cost, or both);

transmit a product order confirmation from the exchange **110** to the customer **120** (a confirmation is often sent to the customer after internet transactions). The product order confirmation comprises the manufacturers confirmation report (the quantity available and the cost of the product);

transport a product **730** corresponding to the product identifier **1540** from the dealer **140** to the customer **120** (the dealer ships the product to the customer);

transfer purchase funds from the customer **120** to the dealer **140** (this is normal procedure; either a dealer charges the customer or the exchange charges the customer); the purchase funds corresponds to the customer price; and,

transfer manufacturer funds from the dealer **140** to the manufacturer **130** (although not specifically stated in Sharp et al., it is well known in business for a dealer to pay the manufacturer for products purchased from the manufacturer that were credited to the dealer).

However, Sharp et al. fail to disclose the manufacturer funds being transferred through the computer network from the dealer. Applicant is reminded that transporting

funds through the internet is very common for a customer, comprising a dealer, a retailer, an individual person or a third party, to pay the manufacturer.

Further, Sharp et al. also do not disclose the customer price comprising the contractural price relationship and the dealer price adjustment. Applicants have admitted on page 2 in paragraph 005 that a customer price is well known to be comprised of a contractural price relationship. It would also be inherent that a dealer price adjustment is included in the customer price as the manufacturer pays the dealer this amount for commission, reward, or shipping costs. For instance, when the customer pays $1000, part of that money is a dealer price adjustment of $80, for example, to be paid to the dealer and the manufacturer will earn the remainder of $920. Therefore, the $1000, which is the customer price, comprises $920, which is the contractural price relationship, and $80, which is the dealer price adjustment. The customer, of course, does not know what the dealer earns as this information is often not shared.

Regarding claim 2, the manufacturer specific order further comprises a customer identifier **555**.

Regarding claim 6, the computer network is a world wide web.

Regarding claim 7, the method further comprises:

transmit a purchase order from the customer **120** to the exchange **110** before transport of the product **730**. However, the product is not transported to the customer through the computer network. Applicant is reminded that transporting software through online is old and common technology.

Regarding claim 9, the method further comprises:

transmit a purchase confirmation from the exchange **110** to the manufacturer **130** through the computer network. Note, this step is normal procedure when the customer places a purchase order. The exchange delivers a purchase confirmation to the manufacturer for the manufacturer to be aware that a purchase has been made.

Response to Arguments

Applicant's arguments with respect to claim 12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. In particular, the omitted limitation "through said computer network" in line 33, in the step of transporting a product from the dealer to the customer necessitated the new grounds. Accordingly, **THIS ACTION IS MADE FINAL**. See

MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30-6:00. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.

June 17, 2005

DAVID E. BOCHNA
PRIMARY EXAMINER